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AUTHORITIES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1924

JOHN F. STEELE, APPELLANT
v.
THE UNITED STATES
No. 235

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

JOHN F. STEELE, PLAINTIFF IN ERROR
v.
THE UNITED STATES
No. 636

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

STATEMENT

Cause No. 235

On December 6, 1922, a search warrant was issued by a United States Commissioner for the Southern District of New York to Isidor Einstein, a General Prohibition Agent, upon an affidavit made by said

agent, authorizing and directing the search of a certain garage located in the four-story building at 611 West 46th Street, New York City, and any rooms, etc., used in connection therewith, for intoxicating liquor, used or intended for use in violation of Title II of the National Prohibition Act, and the seizure of the same. (R. 6–8, No. 235.)

In the affidavit upon which the warrant was issued the agent asserted that on the same day, while standing in front of the garage located in the above building, accompanied by another agent, he saw a small truck driven into the entrance and saw the driver unload from the end thereof a number of cases stenciled " Whiskey," the cases being of the size and having the appearance of whiskey cases.

In compliance with the warrant, Agent Einstein searched the premises and found the following articles which he seized and took into his possession:

150 cases whiskey,
92 bags whiskey,
1 five-gallon can alcohol,
6 five-gallon jugs of whiskey,
33 cases gin,
102 quarts whiskey,
2 fifty-gallon barrels of whiskey,
1 corking machine.

Plaintiff in error Steele, the owner of the premises, controverted the warrant and petitioned to vacate the same, on the ground that it was issued without reasonable and probable cause and in vio-

lation of his constitutional rights. A hearing was had before the United States Commissioner, in pursuance of the act of June 15, 1917, chap. 30, Title XI, 40 Stat. 228, et seq., commonly known as the Espionage Act, and in pursuance of which the warrant was issued, and the petition was denied. (R. 46, No. 235.)

Thereupon, plaintiff in error applied to the District Court for the Southern District of New York, upon the proceedings had and depositions taken before the Commissioner, to vacate and set aside the search warrant and to direct the restoration of the property seized thereunder. On November 9, 1923, the court denied the application, on the ground that the property taken was the same as that described in the warrant and that there was probable cause for believing the existence of the grounds on which the warrant was issued. It was further ordered that the property remain in the custody of the officer by whom it was seized or be otherwise disposed of according to law. (R. 3, No. 235.)

Plaintiff in error then filed assignments of error alleging that the search warrant was issued in violation of the Fourth Amendment to the Constitution, in that it was not issued upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized; that the search was unreasonable; that the warrant violated the Fifth Amendment, in that it deprived plaintiff in error of his

property without due process of law and compelled him to be a witness against himself in a criminal case, and that the warrant limited the search to No. 611 West 46th Street, New York City, whereas the officer in executing the warrant searched other and different premises, namely, 609 West 46th Street. (R. 2, No. 235.)

A direct appeal was allowed from said order and decree of the District Court, and the case is now before this court as No. 235.

Cause No. 636

Thereafter, an information was filed against plaintiff in error in the District Court for the Southern District of New York, charging him with possession in violation of Title II of the National Prohibition Act of the intoxicating liquor described in the return made by the prohibition agent. (R. 1, No. 636.) A trial upon the information was had on the 12th day of March, 1924, before District Judge Garvin and a jury, and defendant was convicted on the evidence obtained by Prohibition Agents Einstein and Schmidt during the execution of the search warrant.

At the trial various motions were made by the defendant to strike out said evidence and to quash the search warrant, on the ground that it was illegal and improperly secured for the same reasons above described, and upon the additional ground that the warrant was void because it was not issued to a civil officer of the United States as required by the provisions of the Espionage Act.

From a judgment of conviction and a sentence of $500 fine (R. 24, No. 636) defendant sued out a writ of error from this court, and the case is docketed as No. 636.

Upon motion of appellant and plaintiff in error both causes were consolidated and advanced for argument.

STATUTES INVOLVED

The statutes involved in these cases will be found in an appendix to this brief.

QUESTIONS PRESENTED

The questions presented all relate to the validity of the warrant under which the search and seizure were made and to the power and authority of a Federal prohibition agent to execute the same. The warrant is attacked on the following grounds:

1. That it was not based upon probable cause, and

2. Did not particularly describe the place to be searched or the things to be seized.

ARGUMENT

I

Validity of the search warrant

A. The showing of probable cause was sufficient

Plaintiff in error contends, first, that the search and seizure were unconstitutional because the warrant and the affidavit upon which it was issued were

not based upon probable cause, but upon suspicion, surmise, and hearsay.

It is conceded that mere rumor, surmise, conjecture, or suspicion can not form the basis for believing the existence of probable cause, and that the affidavit upon which a search warrant is obtained can not consist of mere conclusions based upon hearsay or upon information and belief. This principle is well established by the cases relied on, but the Government claims that they are not applicable here, for the reason that in the instant case the affidavit set forth evidentiary facts upon which the agent's conclusions were based and, taken together, were of such a nature as to warrant the Commissioner's finding that there was reasonable ground for believing that a crime was being committed on the premises sought to be searched.

The search in question was made under the authority of the Espionage Act, *supra*, as the same has been made applicable to cases involving a violation of the National Prohibition Act, section 2, Title II. Section 5, Title XI, of the Espionage Act, provides:

> The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

This provision, the Government insists, has been fully complied with in the instant case. The affidavit of Prohibition Agent Einstein, upon which

the search warrant was based (R. 24, No. 636), contained the following:

> On December 6, 1922, at about 10 o'clock a. m., accompanied by Agent Moe W. Smith, I was standing in front of the garage located in the building at 611 West 46th Street, Borough of Manhattan, City and Southern District of New York. This building is used for business purposes only. I saw a small truck driven into the entrance of the garage and I saw the driver unload from the end of the truck a number of cases stencilled whiskey. They were the size and appearance of whiskey cases and I believe that they contained whiskey.
>
> A search of the records of the Prohibition Director's office fails to disclose any permit for the manufacture, sale, or possession of intoxicating liquors at the premises above referred to.

This is a statement of facts based upon the agent's personal knowledge of what he saw, and is not based upon surmise or hearsay. He says he saw a truck driven into a garage of what appeared to be a building used for business purposes; that he saw the driver unload from the truck a number of cases stencilled "Whiskey," and that they had the size and appearance of whiskey cases. He then says that a search of the records of the Prohibition Director's office fails to disclose any permit for the manufacture, sale, or possession of intoxicating liquors at the above premises. It is upon this

statement of facts of what he actually saw and knew that he bases the following belief (R. 25, No. 636):

> The said premises are within the Southern District of New York and upon information and belief, have thereon a quantity of intoxicating liquor containing more than one-half of one per cent of alcohol by volume, and fit for use for beverage purposes, which is used, has been used and is intended for use in violation of the statute of the United States, to wit, the National Prohibition Act.

It is submitted that the facts recited constituted reasonable grounds for the agent's belief of the presence of liquor upon the premises and were sufficient to support the Commissioner's finding of probable cause upon which the warrant was issued. True, the agent could not be positive that the cases contained whiskey. But positive knowledge is not required by the Espionage Act, but only "facts *tending to establish* the grounds of the application or probable cause for believing that they exist." Evidence to show probable cause which will authorize issuance of a liquor search warrant need not all be common-law evidence which would be admissible in court. *In re Kupferberg,* 284 Fed. 914. Probable cause has been defined by this court as "A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged."

Stacey v. *Emery,* 97 U. S. 642, 645. In 24 R. C. L., p. 706, it is said:

> The question of probable cause does not depend on whether the offense had been committed in fact, or whether the accused is guilty or innocent, but on the affiant's belief based on reasonable grounds. He may act on appearances, and if the apparent facts are such that a discreet and prudent man would be led to believe that the accused had committed a crime, he will not be liable for malicious prosecution although it may turn out that the accused was innocent.

Moreover, if positive knowledge were required, as is insisted upon by plaintiff in error, in instances of this nature, it would be impossible to enforce the Eighteenth Amendment. Agents rarely have an opportunity to examine packages and it is seldom possible for them to be certain of their contents. The packages here in question were *stencilled* "Whiskey." They were not merely labeled, but were marked in the manner that cases in which whiskey is packed usually are marked. They were "regular whiskey cases." (R. 14, No. 636.) As they were unloaded, it was reasonable to suppose that they were to be illegally retained in the garage. In *United States* v. *Casino,* 286 Fed. 976, relied on by plaintiff in error, the court, in quashing a search warrant because the truck was not unloaded and the search warrant was issued two days later, said: "Had the agent seen the liquor

unloaded from the truck, that would be some evidence of illegal possession by the owner of the garage." The foregoing evidence, coupled with the manner in which the cases were handled and the knowledge that no permit existed for the premises in question, was sufficient to warrant the belief that the law was being violated.

This case is not within the rule that affidavits or depositions are insufficient to support a search warrant where they simply state that the affiant or deponent has reason to believe, and does believe, that a crime has been or is in course of being committed, or which go no further than to allege conclusions of law or of fact, or which set out on mere information and belief the material facts on which the right to search or seize is based.

It is submitted that the facts set forth in the affidavit here in question are sufficient to establish probable cause for believing that the garage in the premises sought to be searched was used for the purpose of illegally possessing intoxicating liquor.

B. The place to be searched was sufficiently described

It is next insisted that the search was unconstitutional in that the affidavit and the warrant in pursuance of which it was made did not particularly describe the place to be searched or the things to be seized.

The affidavit upon which the warrant was issued described the place at which Einstein saw the truck as a

> garage located in the building at 611 West 46th Street, Borough of Manhattan, City and Southern District of New York. This building is used for business purposes only.
>
> * * * * *
>
> This affidavit is made to procure a search warrant, to search said building at the above address, any building or rooms connected or used in connection with said garage, the basement or subcellar beneath the same, and to seize all intoxicating liquors found therein.

The warrant directed the search of

> a certain garage located in the four-story building at 611 West 46th Street, Borough of Manhattan, City and Southern District of New York, said building being used for business purposes only—and in any safe or desk, storeroom, container, receptacle, basement or subcellar, building, room or rooms connected or used in connection with said garage. (R. 24–25, No. 636.)

Complaint is made that Einstein admitted that he had never been inside the building; that he never knew, before obtaining the search warrant, anything about the upper stories thereof; that the affidavit upon which he secured the warrant did not set forth that there was any garage, safe, desk, storeroom, basement, cellar, subcellar, room or rooms connected with or used in connection therewith; that the place at which he is alleged to have seen the boxes marked whiskey was not the place where, after search, the contraband was found;

that the contraband was found in other parts of the building which had to be reached by the officer making the search by means of an interior elevator; that only part of the building was known as 611 West 46th Street, the other part being known as No. 609; and that the liquor which was found after search was found in the latter part, and not in that part which is described in the search warrant.

In an affidavit presented to the Commissioner when the search warrant was controverted, plaintiff in error alleged that he lived on the third floor of the premises; that while the warrant stated that the goods to be seized were located in a garage in No. 611 West 46th Street, practically all the goods seized were taken from No. 609 West 46th Street; that 609 is a separate and distinct building from 611; that there is a common party wall between the two buildings; and that a photograph to be produced would show the separate and distinct character of both buildings on the outside as well as the inside. It was further alleged that 150 cases and 92 bags of whiskey and one 5-gallon can of alcohol were seized on the third floor of premises 609, " in the premises adjoining the living quarters of your deponent, which living quarters your deponent shares with another man by the name of Oscar Smith, his wife and child "; that photographs would distinctly show his living quarters and the curtains on the outside windows where he is living, " which

said quarters consist of three rooms, in one of which rooms the said three items of 150 cases of whiskey, 92 bags of whiskey, and one 5-gallon can of alcohol were located "; that the goods seized on the second and third floors of premises No. 609 belonged to him and he had a legal right to their return because " they were in the premises wherein he has his dwelling "; that the goods seized in the adjoining building, No. 611, did not belong to him and he made no claim for them; and further that it is impossible to gain access to the upper floors of premises 609 by going into building No. 611. (R. 8, No. 235.)

This affidavit was controverted at almost every material point by the testimony of the prohibition agents presented to the Commissioner and to the court on the trial of the criminal information, which testimony was evidently believed by the Commissioner, the court and jury. The agents testified that the building was a large brick structure which had the appearance of a garage. The numbers on the building were 609 and 611. (R. 13, 15, 22, 25, No. 235.) The agents entered the building at No. 611, where they had seen the liquor being unloaded. They found no liquor on the ground floor. They then proceeded to the second floor by an elevator located in the rear center of the garage. (R. 16, 32, 33, No. 235.) As they were leaving the elevator on the second floor they saw three men bottling and bagging whiskey in a small

room partitioned off on the 611 side of the building. In another inclosed place, on what has since been learned was the 609 side of the building, they found 36 cases of gin, which they seized together with a corking machine. They then went to the third floor by the same elevator, where they seized 92 bags and 150 cases of whiskey in an inclosed room on the 609 side adjoining a room later claimed by plaintiff in error to be his living quarters. No tax paid labels were found on these bags and cases. (R. 17–18, 33, 34, No. 235.) The entrances to the building consisted of two small and two large doors, the latter being used by automobiles. On the right hand, or 609, side of the building were stairs leading to the upper floors, but they were barred. There was also a stairway on the left hand, or 611, side of the building. Between these two stairways are the entrances to the garage. There is no partition separating the building on the street floor. There are no partitions on the upper floors except the beams supporting the building and a few small rooms inclosed with rough boards nor anything to indicate that there were two separate buildings. To the agents the upper floors had the appearance of store rooms. (R. 18, 27–28, 31–32, 33, 36, No. 235.)

After this testimony was in plaintiff in error took the stand and admitted that only parts of the upper floors are partitioned off; that the elevator is used to reach both sides of the upper floors; that the elevator is strong enough to carry automobiles;

that only parts of the upper floors are rented for storage purposes; that the liquor seized on the third floor was not taken from his living quarters, but from an adjoining room, and that the gin on the third floor was stored there by him. (R. 40–45, No. 235.)

It will thus be seen that there is no basis for the contention that the search warrant was broader than the affidavit or that the search went beyond the authority of the warrant. The warrant directed the search, as requested in the affidavit, of any rooms used in connection with the garage. This was proper, as it was not to be presumed that the liquor would be stored in the garage in plain view of every one. The search of the upper floors was not unlawful, because the testimony clearly shows that they were connected with or used in connection with the garage. They were connected by elevator and stairs. The elevator was large enough to carry automobiles, and it was no doubt used to carry the liquor and other articles from the garage to the floors above. The description of the building by street and number and as a four-story building was sufficient. The cases relied on by plaintiff in error are not in point. They relate to searches of separate and distinct buildings, several doors removed from the buildings described in the warrants. In the instant case, the agents saw only the garage on the street floor. It was entirely open and covered the whole ground floor of the building. So far

as they were concerned, that situation controlled throughout the entire building; and the record does not support plaintiff in error's contention that there were two separate buildings. The evidence shows that the upper floors also were open, with the exception of a few small inclosures. So with respect to the claim that the building was used for other than business purposes. The agents saw no curtains at the windows or any other indications of a dwelling, if indeed the living quarters may be called such—they consisted of two rooms, plaintiff in error sleeping on a cot in the kitchen. The building was an old structure, looked like a garage and the agents did not think that any one lived there. (R. 22, 24, 36, 45, No. 235.) As above pointed out, the liquor on this floor was not seized in the living quarters, but in an adjoining room.

C. The property to be seized was adequately described

It is urged that the direction in the warrant to search for " certain intoxicating liquor containing more than one-half of one per cent of alcohol by volume and fit for use for beverage purposes " was not a sufficient compliance with the Constitution and the statute requiring a particular description of the things to be seized.

This contention is equally untenable. Every constitutional or statutory provision must be construed with the purpose of giving effect, if possible, to every other constitutional or statutory provision and with a view to new conditions and circum-

stances in the progress of the Nation. *Downes* v. *Bidwell,* 182 U. S. 244; *South Carolina* v. *United States,* 199 U. S. 437. So the provisions of the Constitution forbidding unreasonable searches must be construed in the light of the constitutional provision against the sale, manufacture, and transportation of intoxicating liquors. No one can have any right of property in contraband liquor or any right to possess it. As soon as it comes into existence it is forfeited. Intoxicating liquors are inclosed in so many different forms of packages that if the same particularity of descriptive identification were required as in the case of stolen goods traffickers in such liquors would have practical immunity. The distinction between private papers, etc., and goods forfeited to the Government is clearly pointed out in *Boyd* v. *United States,* 116 U. S. 616. In warrants for search and seizure of stolen goods particularity of description is necessary to the protection of the individual from the seizure of other goods of the same general character and his lawful property. But protection of the rights of the accused does not require that the Constitution be construed to exact the same degree of particularity of description in search warrants for contraband liquor, because there is no right of property in such liquor and hence there can be no danger to the citizen of being deprived of property which he is lawfully entitled to hold as against the Government. See *Elrod* v. *Moss,* 278 Fed. 123.

In *Giles* v. *United States,* 284 Fed. 208, in considering section 25 of the National Prohibition Act, which prohibits the possession of liquor intended for use in violation of the act and declares that no property rights shall exist therein, the court said, p. 210:

> The main purpose of this provision is to put intoxicating liquor, illegally possessed, and property designed for unlawful manufacture thereof, into the same category as gambling implements, counterfeit money, obscene literature, and other forms of outlawed articles. Search warrants are an appropriate and long used means of governmental seizure for destruction of such outlawed articles.

It is not alleged that plaintiff in error was misled or prejudiced by the description. In *Petition of Barber,* 281 Fed. 550, 554, it is said:

> The affidavit alleged that in the " malt and hops store " located at the address mentioned therein there was a " large stock of malt and hops and other utensils for the making of beer displayed for sale." This description, especially in view of the character of the materials and utensils mentioned and the use to which, according to common knowledge, they are adapted, and under all of the circumstances, was, in my opinion, sufficiently definite and particular to authorize the search and seizure of such hops, malt, and utensils. It is not claimed by petitioner that any person was misled or prejudiced by such

> description, and I can not doubt that the objection based upon the alleged indefiniteness of description of such property or supposed variance between the property so described and the property seized must be overruled.

In *Sutton* v. *United States,* 289 Fed. 488, it was held that the description " certain liquors," with the statement that a more particular description of which was unknown, was sufficient to support a warrant.

The generic description of intoxicating liquors, such as gin, wine, cordials, whiskey, brandies, was held sufficient in *Lipschutz* v. *Davis,* 288 Fed. 974.

In *Keefe* v. *Clark,* 287 Fed. 372, a seizure of 7,000 gallons of liquor was declared illegal where the warrant authorized a seizure of an aggregate amount not exceeding 450 gallons, but the court recognized that warrants may be issued for the seizure generally of intoxicating liquor.

The seizure in this case was of contraband liquors. Plaintiff in error had no property right in them. There was a reasonably specific description, and that is all that was required. *Giles* v. *United States, supra,* pp. 215–216.

II

Authority of Federal prohibition agents to receive and execute search warrants

Plaintiff in error challenges the validity of the search and seizure upon the grounds that the war-

rant was issued to and executed by a Federal prohibition agent; that such agents are appointed by the Commissioner of Internal Revenue; that they are therefore not civil "officers of the United States," within the meaning of that term as used in Article II, section 2, of the Constitution of the United States and section 6, Title XI, of the Espionage Act, as adopted by the National Prohibition Act, section 2, Title II, and are consequently not endowed with authority either to receive or to execute search warrants.

Plaintiff in error's theory is not supported by Federal statutes or the overwhelming weight of decisions upon the subject.

Congress has made the Commissioner of Internal Revenue, his assistants, agents, etc., primarily responsible for adequate enforcement of the National Prohibition Act (sec. 2, Title II). It has likewise vested that officer and his assistants with all the power and protection in the above work that is conferred by law for the enforcement of laws relating to the manufacture and sale of intoxicating liquor (sec. 28, Title II). In order further to strengthen his authority it has clothed him with power to designate any of his assistants to do any act that he himself is authorized to perform (sec. 1, subdiv. 7, Title II).

Federal prohibition agents, as field representatives of the Commissioner of Internal Revenue, must necessarily be delegates of the powers that he

possesses for enforcement of the Prohibition Act. Among such powers an important one is that of search and seizure, accomplished in most instances by means of the search warrant. As this instrument is the chief *modus operandi* of the agent, it would seem unreasonable for Congress to place him in the field but render him ineligible to receive or execute such a warrant.

Sufficient evidence of an intention on the part of Congress to regard prohibition agents as " officers of the United States," within the meaning of that term as found in the Constitution (Art. II, sec. 2), is contained in section 5, Title I, of the National Prohibition Act, where they are expressly referred to as members of that class.

The fact that the Prohibition Act (sec. 2, Title II) empowers agents to swear out warrants before United States Commissioners, etc., logically leads to the conclusion that Congress did not intend to invest a group of Government officers with power to swear out warrants and then bind their hands by rendering them ineligible to execute instruments of the same nature and of equal importance to the adequate performance of their duty.

The Act Supplemental to the National Prohibition Act (42 Stat. 222) clearly classes such agents with Government officers eligible to receive and execute search warrants when it imposes a penalty upon " any officer, agent, or employee of the United States " engaged in the enforcement of the Na-

tional Prohibition Act who shall search a private dwelling without a warrant directing such search, etc. (Sec. 6.)

In addition to the above statutes, section 23 of the Espionage Act provides, in substance, that nothing therein contained shall be construed to impair or repeal any existing provision of law regulating search and the issue of search warrants.

Attention is also invited in this connection to section 3462, R. S., which confers upon Judges of United States District Courts and upon United States Commissioners authority to issue a search warrant authorizing any Internal Revenue officer to search any premises within their respective jurisdiction. A prohibition agent, being a delegate of the Commissioner of Internal Revenue, would be a revenue officer within the meaning of the above section and therefore authorized to receive and execute search warrants.

This court has denied petitions for writs of certiorari in which this question was raised. (See Nos. 559 and 670, Oct. T. 1924.)

The Circuit Courts of Appeals for the First and Ninth Circuits have held that Federal prohibition agents are authorized to receive and execute search warrants.

Raine v. *United States*, 299 Fed. 407.
Keehn v. *United States*, 300 Fed. 493.

See also the following cases in the District Courts:

United States v. *Daison*, 288 Fed. 199.
United States v. *Keller*, 288 Fed. 204.
United States v. *Syrek*, 290 Fed. 820.
United States v. *O'Conner*, 294 Fed. 584.
United States v. *Edwards*, 296 Fed. 512.
United States v. *American Brewing Company*, 296 Fed. 772.
United States v. *Loeffelman et al.*, 297 Fed. 472.
United States v. *Montalbano*, 298 Fed. 667.
Smith v. *Gilliam*, 282 Fed. 628.

It is essential to the proper and efficient enforcement of the prohibition laws that decisions sustaining the right of Federal prohibition agents to execute search warrants be upheld.

CONCLUSION

It is submitted that the search warrant was valid and was properly executed by an officer authorized to receive and execute the same; that plaintiff in error was deprived of no constitutional rights by his conviction, and that the judgment and decree appealed from should be affirmed.

Respectfully,

JAMES M. BECK,
Solicitor General.
MABEL WALKER WILLEBRANDT,
Assistant Attorney General.
MAHLON D. KIEFER,
Special Assistant to the Attorney General.

FEBRUARY, 1925.

APPENDIX

For the convenience of the court, the following statutes are set forth below:

National Prohibition Act, Title II:

SEC. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors shall investigate and report violations of this act to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United State commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 1014 of the Revised Statutes of the United States is hereby made applicable in the enforcement of this act. Officers mentioned in said section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the act approved June 15, 1917 (Fortieth Statutes at Large, page 217, et seq.)

SEC. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States, goes into effect, manufacture,

sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. * * *

SEC. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, * * *

SEC. 10. No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof showing in detail the amount and kind of liquor manufactured, purchased, sold, or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale, or transportation. * * *

SEC. 18. It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, or recipe advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor.

SEC. 25. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law numbered 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized

shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor and all property designed for the unlawful manufacture of liquor shall be destroyed unless the court shall otherwise order. No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding house. The term " private dwelling " shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. * * *

SEC. 33. After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title. * * *

Act of June 15, 1917, Title XI, 40 Stat. 228 et seq., (Espionage Act):

SEC. 2. A search warrant may be issued under this title upon either of the following grounds: * * *

SEC. 3. A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched.

SEC. 4. The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require

their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

SEC. 5. The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

SEC. 6. If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof, or to a person so duly authorized by the President of the United States, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the person or place named, for the property specified, and to bring it before the judge or commissioner.

SEC. 7. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

SEC. 15. If the grounds on which the warrant was issued be controverted, the judge or commissioner must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and subscribed by each witness.

SEC. 16. If it appears that the property or paper taken is not the same as that described in the war-

rant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the judge or commissioner must cause it to be restored to the person from whom it was taken; but if it appears that the property or paper taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then the judge or commissioner shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law.

○